Supreme Court, U.S.
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(2)

No. 01-1365

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2001

WILLIAM DANKS

Petitioner,

vs.

CLAUDE APPEL AND ROBERT HAEGER

Respondents.

PETITIONER'S SUPPLEMENT TO HIS PETITION FOR CERTIORARI

ALFRED T. MCDONNELL
Counsel of Record
ANDREW S. KELLEY
ARNOLD & PORTER
Suite 4500
370 Seventeenth Street
Denver, Colorado 80202
(303) 863-1000

Counsel for Petitioner

MP

INTRODUCTION

Pursuant to Rule 15.8 of the Court's Rules, Petitioner William Danks submits this supplement to his petition for certiorari to call attention to an Order of the Colorado Supreme Court entered March 12, 2002 (App., *infra.*, 1a), and an Order of the Colorado Supreme Court entered March 18, 2002, which clarifies the March 12 order (App., *infra.*, 3a). Counsel received these materials from the state court after filing the instant petition for certiorari.

In the March 12 order, the Colorado Supreme Court *sua sponte* reconsidered an earlier order denying Mr. Danks' petition to intervene in a petition for discretionary review filed by the Office of Attorney Regulation Counsel ("ORC"). (The court had previously denied the same petition on January 9, 2002.) The ORC's petition seeks discretionary review of the same order that is at issue in Petitioner Danks' petition for certiorari, albeit on different grounds.

Significantly however, the Colorado Supreme Court did not grant Danks' petition for discretionary review to that court, nor Danks' petition to reconsider the Court's denial of his petition for discretionary review. Thus, the Colorado Supreme Court did not grant Danks' attempt to appeal the order at issue in this case, but rather granted Danks the opportunity to intervene in another party's request for discretionary review of the same order.

The March 18 order clarifies the March 12 order, stating that the March 12 order did not lift the order that Danks complains of in his petition for certiorari here.

I. THE RECENT COLORADO SUPREME COURT ORDERS DO NOT AFFECT THE FINALITY OF DANKS' CASE

The recent Colorado Supreme Court orders do not affect the finality of Danks' case because those orders did not "reopen" his case, but rather allow Danks to intervene in a petition for review by another party to the PDJ's order. The Colorado Supreme Court has already denied Danks' petition for discretionary review, denied Danks' petition to reconsider the denial of his petition for discretionary review, and denied Danks motion to file a cross petition to the ORC's petition. What is more, the March 18 order makes clear that the prior restraint on Danks speech remains in place. Barring a *sua sponte* "re-reconsideration" of Danks' petition for review, his case is as final as it will ever be.[1]

The fact that the court below allowed Danks to file a brief in an appeal in a related case should not affect the finality of Danks' case. Such a holding would allow state courts to remove the Supreme Court's jurisdiction at any time merely by *sua sponte* reconsidering a previous denial of review. Moreover, holding that the order in this case is not final would allow the unconstitutional restraint on Danks' speech to remain in place even longer than the 148 days it has already silenced him. It would relegate him again to a state court that has twice denied his petition for relief before Danks could return to this Court to seek certiorari. While it is true that Danks *might* be able to collaterally attack the restraint on his speech by intervening in the ORC's petition, the mere possibility of future collateral attack should not render Danks' case non-final.

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[1] Notably, Danks sought reconsideration of the Colorado Supreme Court's denial of his petition for discretionary review in the same pleading as his motion to intervene in the petition by the ORC. The Colorado Supreme Court, in its March 12 order, was careful to grant only the latter relief.

II. DANKS' CASE IS NOT MOOT

The recent orders of the Colorado Supreme Court do not render Danks' case moot because they do not remove the complained of restriction on Danks' speech. As of the date of filing this brief, Danks' speech has been restrained for 148 days, and the most recent order of the Colorado Supreme Court explicitly leaves the restraint in place. While it is true that the Colorado Supreme Court might remove the prior restraint on Danks' speech in the future, that possibility does not render Danks' case moot. This is particularly true when the Colorado Supreme Court declined to review the prior restraint on two occasions, and declined to remove it on a third.

III. IF DANKS' CASE IS NOT FINAL, THE COURT SHOULD HOLD THIS PETITION IN ABEYANCE UNTIL HIS CASE BECOMES FINAL

If the Court believes that in light of the recent Colorado Supreme Court decisions, Mr. Danks case is not final, Mr. Danks requests that this Court hold in abeyance any ruing on the Petition for Certiorari until the proceedings below are concluded.

Respectfully submitted,

ALFRED T. MCDONNELL
Counsel of Record
ANDREW S. KELLEY
ARNOLD & PORTER
Suite 4500
370 Seventeenth Street
Denver, Colorado 80202
(303) 863-1000
Counsel for Petitioner

APPENDIX A – ORDER OF THE COLORADO SUPREME COURT

SUPREME COURT, STATE OF COLORADO TWO EAST 14TH AVENUE DENVER, COLORADO 80203 ORIGINAL PROCEEDING IN DISCIPLINE Petition Pursuant to C.A.R. 21	CASE NO. 01SA404
IN RE: In the Matter of the Requests for Investigation of William Charles Danks, filed by Bernie Fay (01-01375) and Attorney Regulation Counsel (01-00964)	
ORDER OF THE COURT	

Upon consideration of the Petition Pursuant to C.A.R. 21 and C.R.C.P. 251.1(d) filed herein by Attorney Regulation Counsel ("ARC"), and the Petition for Reconsideration and the Motion for Leave to Intervene in Support of the ARC's Petition Pursuant to C.A.R. 21 and C.R.C.P. 251.1(d) or, in the alternative, to file a Cross-Petition seeking Identical Relief filed by William Danks, and now being sufficiently advised in the premises,

IT IS ORDERED that upon reconsideration, Danks' Motion for Leave to Intervene is GRANTED.

IT IS FURTHER ORDERED that ARC's Petition Pursuant to C.A.R. 21 and C.R.C.P. 251.1(d) is GRANTED. Therefore,

IT IS ORDERED that:

(1) Mr. Danks may file a Brief in support of ARC's petition, or a cross-petition seeking identical relief on the grounds previously asserted in Mr. Danks' initial petition, on or before (20 days from the date of this order);

(2) that the Presiding Disciplinary Judge shall file an Answer to this Rule to Show Cause why the relief requested in ARC's and Mr. Dank's pleading should not be granted, on or before (40 days from the date of this order); and

(3) the ARC and Mr. Danks may file a Reply to the Presiding Disciplinary Judge's Answer on or before (55 days from the date of this order).

IT IS FURTHER ORDERED that pursuant to C.A.R. 21(g)(2) all proceedings below are stayed.

BY THE COURT, EN BANC, MARCH 12, 2002.

APPENDIX B – MARCH 18 ORDER CLARIFYING THE MARCH 12 ORDER

SUPREME COURT, STATE OF COLORADO TWO EAST 14TH AVENUE DENVER, COLORADO 80203 ORIGINAL PROCEEDING IN DISCIPLINE Petition Pursuant to C.A.R. 21	CASE NO. 01SA404
IN RE: In the Matter of the Requests for Investigation of William Charles Danks, filed by Bernie Fay (01-01375) and Attorney Regulation Counsel (01-00964)	
ORDER OF THE COURT	

Upon consideration of Motions for Clarification of Order of Court and the Motions for Permission to Respond, filed by Claude Appel and Robert Haeger, and being sufficiently advised in the premises,

IT IS ORDERED that the order entered by the Presiding Disciplinary Judge on December 18, 2001 remains in effect, but that the underlying disciplinary proceedings against Mr. Danks are stayed pending further orders of this court.

IT IS FURTHER ORDERED that Judges Appel and Haeger may file Answer to the Rule to Show Cause.

BY THE COURT, MARCH 15, 2002